34TH CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 153.

# SAMUEL M. PUCKETT.

[To accompany bill H. R. No. 786.]

JANUARY 30, 1857.

Mr. LAKE, from the Committee on the Judiciary, made the following

## REPORT.

*The Judiciary Committee, to whom was referred the memorial of Samuel M. Puckett, have had the same under consideration, and now report:*

That about the 1st of October, 1837, William M. Gwinn, then the United States marshal for the State of Mississippi, by authority of a distress warrant issued from the Treasury Department of the United States against one Wiley P. Harris, register of the land office at Columbus, in said State, sold as the property of the said Harris certain tracts of land, situate in the county of Neshoba, in said State, comprising about eighteen hundred acres. The land was sold at public auction, and on a credit of one, two, and three years, for the sum of ten thousand six hundred and eighty-nine dollars and forty-one cents, ($10,689 41.) John E. Richardson and the memorialist became the purchasers thereof, and executed three promisory notes, together with John S. Gooch, to the United States, for the sum aforesaid. These notes have been sued on by the United States and judgments rendered thereon against the makers thereof, who, excepting the memorialist, are insolvent and dead. The memorialist paid some five thousand dollars on these judgments.

The marshall, at the sale thus spoken of, did not convey the said land to the purchasers, nor has he or any subsequent marshall made a title to the purchasers thereof. As the sale was made on time, it does not strike the committee as strange that no title was made, as the security for the purchase money was thereby increased by its being withheld. The purchasers were not put in possession of the land purchased, nor have they ever had possession of the same.

From the documentary proofs accompanying the memorial, your committee are convinced that the said Wiley P. Harris never owned the land which the marshall sold as his property, and consequently your memorialist and his co-purchaser (Richardson) acquired under that sale no title whatever.

The memorialist prays that he may be released from the judgments now standing against him, on account of this purchase, and reimbursed the amount paid by him in part satisfaction thereof. It ap-

pears from the memorial, that the purchasers of this land did not know of the defect in their title until after the judgments were obtained against them, and the part satisfaction thereof made as aforesaid. It is possible that if the purchasers had been aware of the fact that they had acquired no title under the sale aforesaid, and that therefore their notes had been given wholly without consideration, that this would have constituted a good defence to the actions of the government against them. But as they did not know of it, and it is a meritorious defence, your committee think that they ought to have the benefit of it on this appeal to the justice of Congress; and it matters not, in this view of the case, whether the defence was available in law, or only reliable in equity.

If this transaction had taken place between individuals, your committee entertain no doubt that relief could have been obtained either in the courts of law or equity.

On this point they have made some examination, and will refer to some authorities.

We find that when property, either real or personal, has been sold under execution, to which the defendant had no title, that the purchaser has been allowed to recover from the plaintiff on the execution to whom the money has been paid by the sheriff.

The case of Sanders *vs.* Hamilton, reported in the third volume of Dana's Reports, page 550, is directly in point. Hamilton had a judgment against Johnson, the execution of which was levied on personal property, which was sold by the sheriff, and purchased by Sanders, the plaintiff in the above named case. The property thus purchased and delivered to him was recovered by the rightful owner in an action of detainer against Sanders, who instituted this suit against Hamilton, the plaintiff, for whose benefit the personal property had been sold. The court held that Sanders could recover, and the measure of damages to be the amount paid by Sanders for the property.

In the same volume, at page 214, will be found the case of De Wolf and others against Mallett's administrators. In this case the court considered the effect of a sale under execution of a tract of land to which the defendant in the execution had no title, and say, at page 219 of the opinion, "that the sale itself is void both because the land sold is not the property of James DeWolf, senior, and because if it had been there was no judgment against him; and under these circumstances, the return of the officer on the execution can be set aside or amended, without resorting to a suit in chancery for that sole purpose."

Your committee would also refer to the case of Wolford *vs.* Phelps, reported in the second volume of J. J. Marshall's Reports, at page 31.

This was a chancery suit. The complainant (Wolford) had purchased at execution sale, in which Phelps was plaintiff, a tract of land mortgaged to Phelps, of which he, the purchaser, (Wolford,) was ignorant. The purchaser paid $180 in cash, and a sale bond for the remainder of the purchase money, and supposed he had bought a good title, free from incumbrance.

The complainant prayed to have the mortgage released, or the con-

tract rescinded, and his $180 returned to him. The court decreed that Wolford had bought a fee simple title to the land discharged from the mortgage, and was entitled to the relief prayed. The reasoning of the court in this case sustains fully the decisions already referred to. They reason thus: "Suppose a stranger happens at a sale of land made under execution, and becomes the purchaser; it turns out that his purchase is worthless; he finds afterwards that the defendant on the execution had no interest whatever in the land. Shall he be compelled to part with his money for nothing, without the semblance of a consideration? Shall we say to him *caveat emptor*? We think not." They also maintain that if the land was levied on by the direction of the plaintiff in the execution, that it is a fraud in him upon the purchaser; and if the sheriff makes the levy without instructions from the plaintiff, it is at least a mistake, and in either case the purchaser is entitled to relief.

These decisions by analogy your committee think sustain the application of the memorialist for relief. He cannot sue his government in chancery, but he is entitled to the equable relief that Congress can afford. We, therefore, report the accompanying bill, and recommend its passage.